

LABOUR DEPARTMENT

The 29th September, 1987

Provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the Workman and the management of M/s. Sant Auto Industries, 246/24, Faridabad.

BEFORE SHRI S. B. AHUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD.

Reference No. 179/86.

Between

SHRI MAINUDIN ANSARI S/O GAMBHIR ANSARI, RAJIV NAGAR-3, JHUGGI NO. 19, SECTOR 25, FARIDABAD AND THE MANAGEMENT OF M/S. SANT AUTO INDUSTRIES, 246/24, FARIDABAD.

Present:—

Shri Jawahar Lal, A.R. for the workman.

None for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Mainudin Ansari Workman and the Management of M/s. Sant Auto Industries, 246/24, Faridabad to this Tribunal, for adjudication:—

Whether the termination of services of Shri Mainudin Ansari is justified and in order? If not, to what relief is he entitled?

2. On notices being given, the parties appeared.

3. The petitioner's case is that he was working in the respondent company for the last four years as Helper. His last drawn wages were Rs. 450 per month. He alleged that his services were abruptly terminated on 31st May, 1986 without any notice. He challenged the order of termination of his service being illegal and in utter dis-regard of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter

referred to as the Act). He has now prayed for reinstatement with continuity of service and with full back wages.

4. The respondent controverted the claim of the petitioner. It was pleaded that the claimant was never employed by the respondent and there did not exist any relationship of employer and employee between the parties. The unit came into existence in November, 1983 and Company has since been closed on 31st May, 1986 and the proprietor had sold the Unit.

5. The petitioner filed rejoinder wherein he reiterated his stand.

6. On the pleadings of the parties, the following issues were settled:—

- (1) Whether there is no relationship of employer and employee between the parties? OPM
- (2) Whether the reference is bad in law? OPM
- (3) Whether there does not exist any industrial dispute between the parties? OPM
- (4) Whether the respondent Company has been closed on 31st May, 1986 as alleged? OPM.
- (5) Whether the termination of service of Shri Mainudin Ansari was justified and in order? If not to what relief is he entitled?

7. Subsequently, the respondent and their authorised representative did not put in appearance and *ex parte* proceedings were ordered against the Management on 2nd June, 1987.

8. The petitioner stopped in the witness-box and also produced documents Exhibit W-1 and W-2 in support of his case.

9. I have heard Shri Jawahar Lal, Authorised Representative for the workman and perused the records. My findings on the aforesaid issues are as under:—

Issues No. 1, 4 and 5.

10. All these issues are interconnected and would be discussed together.

11. Mainudin WW-1 the petitioner has supported his case on oath by deposing that he was employed by the respondent Management four years back and that his services were illegal'y

terminated on 31st May, 1986. He testified that no notice or retrenchment compensation was paid to him. He also stated that the respondent factory was still running and has not been closed. He produced Exhibit W-1 the copy of the bill signed by him showing that he had worked in the respondent Company. There are no reason to disbelieve the sworn testimony of Mainudin particularly when the evidence goes un rebutted on the record.

12. It is amply established by *ex parte* evidence led by the petitioner that he had been in continuous service for more than one year under the employer and that his services were terminated without complying with mandatory provisions of Section 25-F of the Act because no notice was ever given to him and no retrenchment compensation was paid to him. The termination of his services clearly amounts to retrenchment as defined in Section 2 (oo) of the Act.

13. As pre-requisite for valid retrenchment as laid down in Section 25-F of the Act had not been complied with, the retrenchment bringing about termination of services is void ab initio, invalid and in-operative. The respondent company is still running and as such the respondent Company cannot avoid his liability. Consequently these issues are decided against the respondent. Issues No. 2 and 3.

14. The termination of service of an individual workman is now deemed as an industrial dispute between the workman and the employer under Section 2-A of the Act. Thus the reference is proper and both these issues are answered against the respondent.

15. In the result, the reference succeeds. The petitioner is ordered to be reinstated with full back wages and with benefit of continuity of service. An *ex parte* award is passed in favour of the workman. No order as to cost.
Dated : 30th July, 1987

S. B. AHUJA,
Presiding Officer,
Industrial Tribunal, Haryana.
Faridabad.

Endorsement No. 936(B), dated 31st July, 1987
Forwarded (four copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

S. B. AHUJA,
Presiding Officer,
Industrial Tribunal, Haryana.
Faridabad.

No. 9/4/87-6Lab./7205.—In pursuance of the Provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the Workman and the management of M/s. Market Committee, Pataudi, Gurgaon.

BEFORE SHRI S. B. AHUJA, PRESIDING
OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.

Reference No. 85/1986

Between

SHRI MAHABIR S/O SHRI RAM SARAN
VILLAGE KANKROLLA P.O. BHANGROLLA,
GURGAON AND THE MANAGEMENT OF
M/S. MARKEET COMMITTEE, PATAUDI,
GURGAON.

Present:—

Shri Mahavir Tyagi, A.R., for the workman.

Shri M. P. Gupta, A.R., for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Mahabir Workman and the Management of M/s. Market Committee, Pataudi, Gurgaon to this Tribunal for adjudication:—

Whether the termination of service of Shri Mahabir is justified and in order? If not, to what relief is he entitled?

2. On notices being given, the parties appeared.

3. The case of the petitioner is that he was appointed as Cattle Sqrar on 12th April, 1982 by the respondent Committee, but his services were illegally terminated on 31st October, 1983. He was getting then wages of Rs. 340 per month. He alleged that termination of his services was effected in violation of provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), inasmuch as no retrenchment compensation or notice pay was paid to him. He has challenged the order of termination of his service being illegal, arbitrary and void ab initio and prayed for reinstatement with full back wages and continuity of service.

4. The respondent Committee filed its Written Statement wherein it was pleaded that the petitioner was appointed on casual basis in the exigencies of the service and his service commenced on 12th April, 1982 and ended on 9th October, 1982. He was again appointed on 13th October, 1982 for one month and his term of appointment was extended from time to time and ultimately his service were terminated on 31st October, 1983. It was then pleaded that the termination of service of the petitioner does not amount to retrenchment and the same was effected in the terms of contract of service.

5. The petitioner filed his rejoinder wherein he controverted the stand of the respondent Committee and alleged that he had completed more than 240 days of service and that his retrenchment was quite illegal and unjustified.

6. On the pleadings of the parties the following issue is settled:—

- (1) Whether the termination of service of Shri Mahabir Singh is justified and in order? If not, to what relief is he entitled? OPM

7. I have heard Shri M. P. Gupta learned A.R. for the respondent committee and Shri Mahavir Tyagi, learned A.R. for the workman and perused the record. My findings on the aforesaid issue is as under:—

Issue No. 1.

8. On behalf of the respondent Committee, Shri M. P. Gupta, Authorised Representative forcefully contended that since the petitioner's appointment was for fixed period which extended from date to date. His case falls squarely within the exception appended to section 2(oo) of the Act and as such his termination of service on 31st October, 1983 cannot be said to be retrenchment as defined in said section. This contention has got no force. There is no dispute that the initially the petitioner was appointed as Cattle Sgarer on daily wages on 12th April, 1982 for 89 days,—vide application and orders thereon Exhibit M-1. His appointment was extended from 10th July, 1982 to 9th October, 1982,—vide orders on application Exhibit M-2. He was again appointed from 13th October, 1982 to 12th November, 1982,—vide orders on application Exhibit M-3 and thereafter his services were extended,—vide orders Exhibit M-4, and M-5. These facts are quite apparent from the statement of Daya Parsad Assistant Secretary of the respondent

Committee MW-1. Exhibit W-1 is the copy of certificate issued by the respondent Committee which shows that the petitioner had worked on *ad hoc* basis from 12th April, 1982 to 31st October, 1983. It is also clearly admitted by Daya Parshad Assistant Secretary of the respondent Committee MW-1 in his cross examination that the petitioner has worked for more than 240 days during the preceding year when calculated with the reference to the date of termination of his services. Thus it would be seen that the petitioner was appointed on daily wages and his tenure of employment was extended from date to date but from these documents no inference can be drawn that his service was under any contract of employment. In recent ruling reported as *H. D. Singh v. Reserve Bank of India and others*, 1985-Lab. I.C. page 1733, the Hon'ble Supreme Court has strongly deprecated the tendency of the employer to keep the employee on daily wages and *ad hoc* basis for long time just to deprive them from statutory beneficial provisions of the Act. Their Lordships further discussed that said practice on the part of the employer falls within the meaning of term unfair labour practice. Admittedly the petitioner had worked for more than 240 days in a preceding year prior to the date of termination of his service and no retrenchment compensation or pay in lieu of notice period as envisaged in Section 25F of the Act was paid to the petitioner before terminating his service. So his termination of service was void *ab initio* as the same was effected in utter disregard of the provisions of Section 25-F of the Act. Consequently the termination of service of the petitioner cannot be sustained being unlawful.

9. In the result, the petitioner is ordered to be reinstated with full back wages and with benefit of continuity of service. The reference is answered in favour of the petitioner. The award is passed accordingly. No order as to cost.

Dated : 31st July, 1987.

S. B. AHUJA,
Presiding Officer,
Industrial Tribunal, Haryana.
Faridabad.

Endorsement No. 936(B), dated 31st July, 1987
Forwarded (four copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S. B. AHUJA,
Presiding Officer,
Industrial Tribunal, Haryana.
Faridabad.